Supreme Court, U.S.
FILED

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No. ——— OFFICE OF THE CLERK

In The
Supreme Court of The United States

Michael B. Ellis,
Petitioner

Vs.

City of Garland, Tx., et al. & City of Carrollton, Tx., et al.,
Combined Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

Petition for Writ of Certiorari
(with attached Appendix)

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38 pp

Questions Presented for Review

Question 1: Did the 5th Circuit err when it held that Complaints such as Plaintiffs' "fail to articulate a violation of a federal right"?

Question 2: Since the Defendants' actions are public record and indisputable, did the 5th Circuit err when it held that Plaintiff's factually complete Complaints articulate only "a conclusory allegation that the Defendants' actions deprived him of due process".

Question 3: In light of the District Court failure to even address, let alone decide, the factual controversy raised by Plaintiff's "Garland" Complaint regarding colorable municipal 'judge' Beasley's adamant refusal to qualify himself properly as a Texas Judge, was it error for the 5th Circuit to uphold the District's *sua sponte* grant of "immunity" to the colorable "judge" when the Circuit also failed to even address the still undecided fact controversy of whether Beasley had standing to invoke immunity?

Listing of Parties

Cause No. 99-10766
Plaintiff/Appellant: Michael B. Ellis

Defendants/Appellees: City of Carrollton, Texas, a municipal corporation; Karen N. Brophy; Lynn Nunn; Lynn Bolish; Shirley Armstrong; Michael Drewry
The Carrollton Defendants were represented by
James Ralph Jordan
Suite 3050
325 N. St. Paul
Dallas, Tx. 75201

Cause No. 99-10906
Plaintiff/Appellant: Michael B. Ellis

Defendants/Appellees: City of Garland, Texas, a municipal corporation; Robert Beasley; Charles M. Hinton, Jr.; Ron Jones, II; M. Shannon Kackley; Montrice Session; Debbie Frey.
The Garland Defendants were represented by *pro se*
Defendant Charles 'Charlie' Hinton
P.O. Box 469002
Garland, Tx. 75046-09002

Texas Attorney General Served (Per Rule 29.4.c)

Since this is a case questioning the constitutionality of Texas Govt. Code, Chapter 30, 28 U.S.C. Sec. 2403(b) may apply. Accordingly, Texas Attorney General John Cornyn has been served a copy of this Petition.

No federal court has certified to the Texas Attorney General the fact that the constitutionality of the Texas Govt. Code's Chapter 30 has been drawn into question.

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Statement of Jurisdiction

1. 5th Circuit's judgment dismissing Plaintiff's Appeal was entered April 12, 2000.

2. Plaintiff's Motion for Rehearing before the Circuit Panel was denied on July 11, '00. Plaintiff now files this Petition.

Basis of Federal Jurisdiction in District court

Federal jurisdiction in the District Court was premised upon 28 U.S.C. Sec. 1343, "The District Courts of the United States have original jurisdiction of any civil action to redress the deprivation, under color of any state stat. and ordinance, of any right secured by the Constitution for the United States of America". This is a 'Title 42, Section 1983' civil rights case.
Plaintiff claims violation of both his federally protected rights to access courts and to procedural due process.

Basis of Supreme Court Jurisdiction of this Petition

28 U.S.C. Sec. 1254 gives the Supreme Court jurisdiction to review by certiorari civil judgments issued by Courts of Appeals.

Statement of the Case

A. Re: Violation of Plaintiff's right to *substantive* due process

Plaintiff has alleged that his federally protected (by the14th Amendment) **substantive** right to due process has been violated by the Defendants when they refused to allow him access to lawfully created criminal Courts located in the

respective defendant municipalities.
Indisputable, public record facts related by both of Plaintiff's Complaints show that the Texas Legislature has purportedly re-delegated to the Defendant cities the Legislature's *exclusive* power to create state courts. Pursuant to this purported re-delegation, the Defendants' claim, by the passage of a mere ordinance, to have abolished the "old" State Courts created by statute of the Legislature; the Defendants also claim to have created (by the same ordinance) brand new 'courts of record' purportedly replacing the statutory Courts.

The Defendants subsequently forced Plaintiff to defend himself against state criminal charges in their replacement 'courts' while denying him access to what Plaintiff considers the legitimate, statutory Municipal Courts located in their cities, the operation of which the Defendants have suspended.

B. Re: Violation of Plaintiff's right to *procedural* due process

Plaintiff further alleged that his federally-protected (14th Amendment) right to *procedural* due process was violated when the Defendants utilized court procedure enacted by the Legislature for individual cities via local law (in direct defiance of multiple, specific Texas constitutional prohibitions), to hamper and finally eliminate Plaintiff's access to any meaningful state appellate remedy.[1]

Defendant City of Carrollton actually admits in its "Court of Record Feasibility Study" that it joined the scheme in order to "eliminate appeals" from 'judgments' of their new 'court' while thus vastly "increasing revenue" to the city's treasury. Tx. Govt. Code Chap. 30 is composed of dozens of similar local laws passed by the Legislature to assist those cities to heavily condition and thus eliminate appeals while increasing municipal revenue. In Plaintiff's experience, there is no remedy from the scheme available to Texans.

Procedural History

Mar. 16, '98: Plaintiff/Petitioner filed his civil action against Defendant City of Carrollton, et al., alleging the city and its agents violated Plaintiff's federally protected rights to access courts and to procedural due process. His Complaint is based ***only*** upon the indisputable, factually-complete **public record**.
Plaintiff's case against Carrollton was assigned to U.S. District Judge A. Joe Fish.

June 11, 1998: the Carrollton Defendants filed a Rule 12(b)6 Motion to dismiss.

Sept. 22, '98: Plaintiff filed a "Motion for Scheduling Conference", since as of this date, Fish had not ruled on Defendants' Motion to Dismiss from June.

Nov. 6, '98: with Fish failing to Rule on the Defendants' Motion to Dismiss *or* Plaintiff's Motion for Scheduling Conference, Plaintiff files his Rule 56 Motion for Summary Judgment. All facts necessary to determine the legitimacy of the Defendants' 'court', its 'rules', its 'judgments', etc. are public record; no disputed facts prevent Summary Judgment.

Dec. 7, '98: twenty (20) days AFTER the time allowed by Rule 56 and Local Rule 7.1e, the Defendants file a late "Objection to Summary Judgment and Motion for Enlargement".

Dec. 14, '98: without allowing Petitioner to reply, Fish grants the Defendants' late "Motion for Enlargement..." holding that Fish's own failure to rule on the Defendants' Motion to Dismiss filed June 11, '98 was a "well-founded ground" for the Defendants to escape controverting the public record

facts presented in Petitioner's "Motion for Summary Judgment".

Feb. 25, '99: Plaintiff filed his second civil action, this time against the Defendants "City of Garland", et al., relating generally similar public record facts, regarding the Garland Defendants' creation of a substitute 'court' and their use of complex local rules (promulgated by the Texas Legislature for the City of Garland, Texas alone) to eliminate Plaintiff's access to meaningful state appellate remedy. In this case, Plaintiff raises as an additional cause of action, the fact that colorable municipal 'judge' Robert Beasley repeatedly refused, during the course of the proceedings before him, to qualify himself per Texas constitutional requisite as an appointed officer of the State of Texas. The Garland case was again assigned to District Judge A. Joe Fish. Again, all facts proving Plaintiff's allegations against Garland, et al., are public record, factually complete and indisputable.

April 9, '99: In the 'Carrollton' case, Fish partially grants Defendants' Motion to Dismiss, awarding Defendants Bolish and Drewry immunity for their roles in daily operating the 'court' created by Carrollton's 'Ordinance #1920', while granting Plaintiff leave to file "an amended complaint alleging with greater particularity the factual basis of" Plaintiff's other claims.

April 9, '99: In the 'Garland' case, Plaintiff files his Motion for Summary Judgment, since all facts regarding the Defendants' actions are indisputable public record.

April 29, '99: In the 'Carrollton' case, Plaintiff files his "Second Amended Complaint" citing dozens and dozens of specific, indisputable, public record facts referencing public record documents already provided to the District Court in Plaintiff's Motion for Summary Judgment. i.e.,

1. the Defendants' so-called 'Court of record Feasibility Study',
2. the Defendants' 'Resolution #1177',
3. the Defendants' 'Ordinance #1920', by which the Defendants' claim to have created a new 'court' while purportedly abolishing the statutory Municipal Court created by general law of the Texas Legislature,
4. the so-called "Carrollton 'court of record Act", codified in the Texas Govt. Code's Chap. 30, subchapter "V" wherein the Legislature gives a local option to Carrollton's City Council to suspend the Texas Code of Criminal Procedure, etc.

May 28, '99: In the 'Carrollton' case, Fish enters his Memorandum Order dismissing Plaintiff's Complaint with prejudice, claiming, *inter alia*, that the dozens of specific, documented public record facts presented by Plaintiff's 2nd Amended Complaint are mere "conclusory allegations". As the basis of his opinion, Fish speciously informs us that Texas

> "courts have uniformly rejected the argument that a statute creating a court for a particular county violates the proscription against local or special laws."

[Plaintiff, *infra* (see"Fish Failure"), claims Fish's opinion is "specious" because the issue Fish decided, (e.g., of whether the *Legislature* may create courts by local law), was not before his bench for decision! On the contrary, since each statute codified in Tx. Govt. Code Chap. 30 as enacted by the Legislature begins with the words:

> **"The governing body of the City may *create* a municipal court of record...",**

and pursuant thereto *each City* claims to have created a brand new 'court' by passage of a mere ordinance, Plaintiff's case instead raised the still- undecided issue of whether the Legislature can lawfully re-delegate its *exclusive* power to

create courts to a political subdivision.
To add insult, Fish also left completely unaddressed Plaintiff's other main issue, e.g., (restated)

> "Does the Legislature's enactment of a local law regulating the practice before an individual municipal court, (which the so-called 'Carrollton court of record Act' purports to do), violate not only the direct constitutional prohibition against legislative enactment of such local laws, but does its use by the Defendants to condition and eliminate Plaintiff's access to state appellate remedy also violate Plaintiff's right to procedural due process?"]

July 8, '99: In the 'Garland' case, Fish Memorandum Order dismisses Plaintiff's Complaint on the same specious ground as Fish's Dismissal of the 'Carrollton' case. Plaintiff's Garland Complaint alleged one additional cause of action: the repeated, adamant refusal of Garland's colorable 'judge' to qualify himself properly as a Texas Judge *until 9 days after* arresting and incarcerating Plaintiff for alleged 'contempt'. Fish's 'Garland' Order fails to make the factual determination of whether Beasley was properly qualified. In spite of the public record facts available to Fish supporting Plaintiff's allegation of Beasley's substantive disqualification, Fish *sua sponte* grants the colorable 'judge' absolute judicial immunity from suit regardless of his standing.

June 24, '99: Plaintiff timely files his Notice of Appeal in the 'Carrollton' case.

Aug. 6, '99: Plaintiff timely files his Notice of Appeal in the 'Garland' case.

April 12, '00: 5th Circuit panel consolidates appeals, dismissing both. J. Emilio M. Garza (authoring the Opinion

of the panel) holds that Plaintiff's claimed deprivation, by the Defendants under color of state law, of Plaintiff's federally protected rights to access courts and to procedural due process, "fails to articulate a violation of a federal right". The Garza-authored Opinion further characterized the allegations of Plaintiff's Complaints, supported by numerous indisputable facts from the public record, as "a conclusory allegation that the appellees' actions deprived him of due process" and that the "district court properly dismissed the cases for failure to state a cognizable federal claim".

April 28, '00: Plaintiff files at 5th Circuit his "Motion for Panel Rehearing

July 11, '00: The Circuit denies Plaintiff's Motion and amends its ruling.

Argument

Introduction

Petitioner herein will prove that the 5th Circuit has so far departed from the accepted and usual course of judicial proceedings and sanctioned a similar departure by the District Court, as to call for an exercise of the Supreme Court's supervisory power.

Indeed, Plaintiff/Appellant's Complaints offer an indisputable, factually complete, **public-record** which conclusively demonstrates that the Defendants/Appellees, (municipal corporations, their attorneys and their agents), are engaged in a successful, open, statewide consortium/conspiracy to, *inter alia*,

A. suspend operation of legitimate Texas municipal courts created by state **statute**, while creating, **via ordinance**, substitute/replacement municipal 'courts

of record',

B. suspend operation of the Texas Code of Criminal Procedures as it relates to Texas Municipal Courts, while operating said 'courts of record' according to complex local 'rules of court' promulgated by the Texas Legislature in direct violation of multiple, explicit Texas constitutional prohibitions forbidding
   1.) enactment of 'local laws' regulating the practice before individual courts, or
   2.) enactment of local laws where general laws may be made applicable;

C. Force all litigants in their cities to defend themselves in so-called 'courts of record' created by ordinance; then

D. Heavily conditioning an appellants' right to appeal with thousands of words of complex appellate procedure, which procedure is vastly different, but purportedly supercedes, relevant, simple general law of the Texas Code of Criminal Procedure; then

E. cite alleged failure by appellants to conform to the Defendants' complex local rules, resulting in

F. thousands of colorable but unappealable monetary 'judgments' in favor of the particular Defendant City's treasury.

In the third paragraph of each original Complaint against the respective cities, and numerous times thereafter, Plaintiff asserted that said actions of the Defendants, taken under color of arguably void state law and city ordinances, have violated Plaintiff's federally protected rights to

"A. Access a legally constituted Court for determination of causes on their merits, per the Fourteenth amendment to the United States Constitution, and to

B. Due process of law" (both substantive and procedural) "guaranteed by the Fourteenth Amendment..." to the Constitution for U.S.

Question 1: Did the 5th Circuit err when it held that Plaintiff's Complaints "fail to articulate a violation of a federal right"?

A. Re: Plaintiff's claimed violation of his right to access courts.

Federal case law unequivocably supports Petitioner's "right to be tried by a legally constituted court, not by a kangaroo court", *Williams v. U.S.*, Fla., 341 U.S. 97.

Since the Texas Constitution, Art. V, Sec.1, imposes upon the Texas Legislature the *exclusive* power to create courts and suspend state statutes, the Legislature's attempted re-delegation of both powers in the various, numerous "court of record Acts" (codified in Chapter 30 of the Texas Govt. Code), is arguably void. Ruling Texas case law, without exception absolutely prohibits any re-delegation by the Legislature of its "authority to control the organization of courts specially commited to it", *De Silvia v. State*, 229 S.W. 542. Simply put, in Texas "the Legislature cannot delegate its exclusive, delegated authority", *Ex Parte Mode*, 180 S.W. at pg. 728.

Furthermore, by the passage of a mere ordinance, the Defendants fatuously claim to have abolished the statutory municipal courts created by general Act of the Texas Legisalture. Since the Defendants will **never** have authority to abolish statutory creations of the state Legislature, clearly the "old" Municipal Courts still exist in the defendant cities regardless of the Defendants claims to the contrary. But the operation of the "old" courts ***has been suspended***, and such suspension has been at the *sole option* of the Defendant cities! This suspension of general law by the cities directly defies Art. 1, sec. 28 of the Texas Constitution, which commands that:

"No power of suspending laws in this State shall be exercised except by the Legislature".

Accordingly, when the Defendant Cities, pursuant to unconstitutional re-delegations of the Legislature, suspended operation of statutory Municipal Courts created by general law enactment of the Legislature, (by **substituting** a 'court' created via Ordinance of their city council), then forced Plaintiff to defend himself against state criminal charges in said colorable 'courts', the Defendants not only violated the Texas Constitution, but Plaintiff claims they also clearly violated his federally-protected Fourteenth Amendment right to access legitimate state courts.

B. Re: Plaintiff's claimed violation of his right to procedural due process

As Plaintiff clearly explained in his "Second Amended Complaint" in the 'Carrollton' case,

"Due process in the Fourteenth Amendment is due process according to the constitution and the laws of the particular state, not the process of another state or of the United States", *(citing U.S. ex rel. Auld v. Warden of N.J. State Pen., C.A.N.J. 187 F2d 615)*

Accordingly, "due process of law" in a criminal case in Texas contemplates the use of procedure created in conformation to Texas constitutional requirements. And since Art. III, Sec. 56, clause "P" of the Texas Constitution states that:

"The Legislature shall not...pass any local or special law...Regulating the practice...before courts",

Plaintiff claims that the "Carrollton court of record Act" and "Garland court of record Act" are clearly void on their face.

Additionally, since the Texas Constitution, at Art. III, Sec. 56, clause "DD" also commands that:

"And in all other cases where a general law can be

made applicable, no local law shall be enacted",
and since each act purports to regulate the practice before its respective municipal court with numerous clauses purportedly superceding yet contradicting applicable portions of the general law procedures (codified in Chapt. 45 of the Texas Code of Criminal Procedures), Plaintiff claims that each "court of record act" is void in its effect, as well as its face.

Ruling Texas case law supports the unmistakably clear prohibitions of Art. III, Sec. 56 as cited, (See *City of Fort Worth v. Bobbitt*, 36 S.W.2d, 470)

Regarding this procedural due process claim, Plaintiff asked the federal courts to first determine the penultimate question of the legitimacy of 'local laws' regulating the practice before individual courts such as those codified in Chapt. 30 of the Tx. Govt. Code.

Next, Plaintiff asked the federal courts to decide the ultimate question concerning his procedural due process claim, (restated):

> "when the provisions of the "court of record acts" were used to eliminate Plaintiff's access to meaningful state appellate remedy, did the Defendants violate Plaintiff's federally protected 'Fourteenth Amendment right' to procedural due process of law".

The allegations of Plaintiff's Complaints most certainly **do** implicate his federally protected rights.

Fish Failure

Instead of addressing the issues properly raised by Plaintiff, i.e., whether the Texas Legislature may lawfully **re-delegate its authority** to create courts and suspend statutes, or **enact local laws regulating the practice before particular courts**, etc., U.S. District Judge A. Joe Fish, raised and decided to his

satisfaction the totally unrelated, specious issue of whether the Texas Legislature may create courts by local law. Since the Legislature *and* the respective Defendants all contend, in the public record, that the Legislature did NOT create the so-called 'court' in question, but that the respective City Council's created their own 'courts of record', Fish's finding, ("that the Legislature may create courts by local law"), is spectacularly inapposite.

Fish then injected this inapposite determination into Plaintiff's case, claiming that because the Legislature may create courts, Plaintiff's Complaints, (which never even raised that question!), "fail to state a claim" under Title 42.

The Circuit subsequently ignored this fundamental and monumental error by Fish, which formed the basis of Fish's dismissal of Plaintiff's Complaints.

Summary of Question 1

Plaintiff's Complaints are substantiated by explicit public record facts demonstrating the Defendants' participation in a successful, open statewide conspiracy to

1. suspend operation of legitimate state courts and the Texas Code of Criminal Procedures, as well as
2. create substitute 'courts' and complex appellate procedure differing from city to city, etc.

When the Defendants, who are mostly attorneys, forced Plantiff to defend himself in their colorable 'courts', complete with colorable criminal rules, colorable 'state's attorneys', (and in Garland's case even a colorable 'judge'),then denied him access to meaningful state appellate remedy by citing the complex procedure promulgated via local law of the Texas Legislature, Plaintiff's federally protected rights have been clearly implicated.

The Circuit's holding that Plaintiff's relation of such actions by the Defendants "fails to articulate a violation of (Plaintiff's) federal right" is so clearly unsupportable, as a matter of law, as to call for the exercise of the Supreme Court's supervisory power to review and remand.

Question 2. Since the Defendants' actions are public record and indisputable, Did the 5th Circuit err when it held that Plaintiff's factually complete Complaints articulate only "a conclusory allegation that the appellees' actions deprived him of due process of law"?

Both of Plaintiff's Complaints offer the explicit, public record facts necessary to support his claimed deprivation of federally secured rights.
For example, to support his claim against Carrollton that the Defendants deprived him of the right to access legitimately created state courts, Plaintiff's Complaint relates specific facts derived from the public record revealing how the Defendants created their so-called 'court of record', to wit:

Parag. 11 of Plaintiff's Second Amended Complaint against Carrollton, relates the Defendants' creation of a so-called "Court of record Feasibility Study", wherefrom we trace the inception of the Defendants' plan to eliminate "processing of appeals" (i.e due process appeals) in order to "increase revenue" to the city. Defendant Armstrong authored, signed and presented the 'study' to Carrollton's City Council.

Para. 11 also cites Carrollton's "Resolution #1177" which authorized funds from the city to lobby the Texas Legislature into re-delegating to the City the Legislature's exclusive authority to create courts, suspend statutes, etc.

Defendant Brophy approved and signed the Resolution.

[Para. 26 of Plaintiff's First Amended Complaint traces the evolution of Texas Senate Bill 1310 and companion House Bill 1354 through the Texas Legislature resulting from the Defendants lobbying efforts.]

In Para. 8 of his Second Amended Complaint, Plaintiff cites the "Act" of the 73rd Texas Legislature, [1993], Chapter 324, Sec. 1, currently codified in the Texas Govt. Code as Chapter. 30, subchapter "V" "Carrollton", wherein the Legislature purportedly re-delegates its exclusive authority to create courts to Carrollton, at Carrollton's sole option.

In Para 11, Plaintiff further cites Carrollton "Ordinance #1920" wherein the city claims to have created a "court of record", (by which ordinance *the Defendants claim* to have abolished the 'old' Municipal Court created by general enactment of the Legislature). Defendant Nunns approved and signed the clearly unconstitutional Ordinance.

The unconstitutional policies, practices and customs of the *City of Carrollton* and its agents, violating Plaintiff's rights to access courts and to procedural due process, are thus revealed in explicit detail by Plaintiff's presentation from the **public record** of the Defendants "Feasibility Study", their "Resolution #1177", their "Ordinance #1920", and the "Carrollton court of record Act" of the 73rd Legislature, read in conjunction with the other factual representations of Plaintiff's Complaint.

The unconstitutional policies and practices of the *City of Garland*, violating Plaintiff's right to access courts and to procedural due process, are also revealed explicitly from the public record, by their Ordinance #4124, the "Garland court

of record Act" of the Govt. Code Chp. 30, subch. "O", read in conjunction with the other public record facts related by Plaintiff's Complaint.

In sections of his First Amended Complaint entitled "First Cause of Action", "Second Cause of Action", etc. Plaintiff sets forth, among other things, how the Defendants acts violate the Texas Constitution, holdings of the Texas Supreme Court and also how his federally protected rights to due process have been implicated.

Bluntly re-stated: Pursuant to Rule 8(a), Plaintiff's Complaints show short, plain statements of his claimed deprivation by the Defendants, (under color of void state 'laws' known respectively as "Carrollton court of record Act" and the "Garland court of record Act"), of his federally-protected due process right in its most essential, basic elements:

1. the right to access legitimate state courts, and
2. the right to procedural due process consonant with Texas Constitutional requisites.

The Defendants, (mostly attorneys) were adequately informed by Plaintiff's Complaints of the causes of action against them.

The Circuit opinion, authored by Emilio M. Garza, which branded the numerous, indisputable public-record facts of the Defendants actions as related by Plaintiff's Complaints as "a conclusory allegation", should thus be seen as unsupportable as a matter of law, again militating review and remand by the Supreme Court.

Question 3. "In light of the District Court failure to even address, let alone decide, the factual controversy raised by Plaintiff's "Garland" Complaint regarding colorable municipal

judge' Beasley's adamant refusal to qualify himself properly as a Texas Judge, was it error for the 5th Circuit to uphold the District's *sua sponte* grant of immunity to the colorable 'judge' when the Circuit also failed to even address the still undecided controversy of whether Beasley had standing to invoke immunity?

Factual Background:

Plaintiff's Complaint against the City of Garland, et al., related, *inter alia*, his repeated attempts, during the months of a criminal 'trial' before Beasely, to convince Garland's colorable municipal 'judge' to qualify himself per Texas Constitutional requisites, (Art. XVI, Sec. 1).
Previous to the date when Beasley caused the arrest of Plaintiff for alleged "contempt", the Texas Secretary of State repeatedly certified to Plaintiff that Beasley was and remained unqualified. Finally, when Plaintiff again confronted Beasley with his ongoing refusal to swear and file his oath of office, Beasley caused Plaintiff's arrest and incarceration, alleging "contempt".
According to the public record, as related in Plaintiff's Garland Complaint, nine days AFTER his arrest of Plaintiff, Beasley filed the mandatory "Statement of Officer" required of Texas Judges, which must be filed *previous* to entering upon the duties of office..

Federal Court Opinions

Both the Circuit and District Opinions conveniently failed to address the public record facts related properly by Plaintiff's Complaint raising the question of whether Beasley was a qualified Texas Judge when he ordered the arrest and incarceration of Plaintiff. Both the District and Circuit *sua*

sponte awarded judicial immunity to Beasley.

When a federal Circuit ignores public record facts properly related in a complaint, in order to support a District Court's blanket grant of immunity to a mere colorable 'judge' who pointedly, repeatedly refused to qualify himself as required by a state constitution, such an act is clear departure from the accepted and usual course of judicial proceedings, mandating Supreme Court supervision.

Petitioner's Note

Petitioner, who is *pro se*, has admittedly learned a great deal about litigation in his work through the federal courts. For example, it has been brought to his attention that the numerous legal conclusions (such as his claim in his Complaints that the Defendants' 'homemade courts of record' created by mere ordinance are 'bogus') grates on the trained judicial mind. For the technical defects in his work Petitioner now makes apology and certainly welcomes appropriate criticism.

But does the presence of numerous, annoying conclusory allegations in a *pro se's* complaint necessarily disqualify that Plaintiff from receiving fair, impartial, competent adjudication on the merits of his accusations, related as they are from the indisputable, factually-complete public record?.....

Relief Requested

Plaintiff hereby requests the Supreme Court issue its Writ of Certiorari to the 5th Circuit and exercise its supervisory

authority to determine well and truly, whether or not

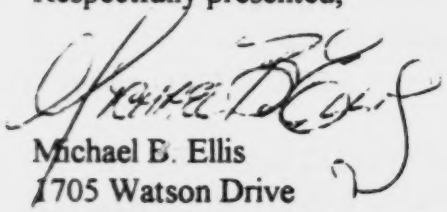
1. Plaintiff's Complaints "articulate a violation of a federal right'; and
2. the factually complete, indisputable public record related by Plaintiff's Complaints provide more than "a conclusory allegation that the appellees' action deprived him of due process of law"; and
3. the facts before the District and Circuit supported their *sua sponte* award of judicial immunity to colorable 'judge' Beasley.

Should the facts of the case so warrant in the Opinion of this Court, Plaintiff requests remand to the District to (finally!) compel application of the law to the public record facts related by his complaints.

Petitioner also requests **Oral Argument** to assist this Court in contemplating his extraordinary claims, as well as such other relief as this Court feels equitable and just for the parties.

Plaintiff feels Texans have a federally protected right to access lawfully created, and lawfully operated, state criminal trial courts at the Texas municipal level. Plaintiff is confident this Court will compel the Defendants to finally address the public record of their actions.

Respectfully presented,



Michael B. Ellis
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Appendix

Opinions entered in conjunction with the judgment sought to be reviewed. (Please be aware that **numerous factual errors** and **faulty legal presumptions** remain uncorrected herein, as written by both Fish and Garza.)

I. Opinion of U.S. District Court, Dallas Division
Ellis v. City of Carrollton, et al.
Cause No. 3:98-CV-0706-G
Date of Entry: May 28, '99
Judge A. Joe Fish Memorandum Order Dismissing Petitioner's case against City of Carrollton, et al.

"On Feb.25, 1997, plaintiff Michael B. Ellis ("Ellis") appeared in Carrollton Municipal Court No.1 (the "municipal court") to defend a traffic citation. See First Amended Complaint and Jury Demand ("Complaint) Para. 34. Lynn Bolish, an assistant city attorney for Carrollton, prosecuted the case, and Michael Drewry, municipal judge, presided. See Complaint, Para. 35-36. Ellis was convicted and ordered to pay a fine, Para. 37.

"On March 16, 2998, Ellis --proceeding *pro se* – filed this case pursuant to 42 U.S.C., sec. 1983 ("section 1983"), alleging that he was convicted by a "false 'court'", Complaint Para.2, and deprived of his property without due process of law. See *id.* Para. 23-38. Ellis further alleged that defendants Bolish and Drewry improperly prosecuted his case, Para. 35-37. He also complained that the City of Carrollton, Bolish, Drewry, and the other defendants, Brophy, Nunn and Armstrong (collectively "the defendants"), conspired to establish and operate the "false court" for the purpose of eliminating appeals and increasing revenue.

"On April 9.1999, this court granted the defendants' motion to dismiss Ellis' claims pursuant to Rule 12(b)(6) of the

Federal Rules of Civil Procedure. In light of Ellis' *pro se* status, however, the court granted him leave to file an amended complaint, alleging with greater particularity the factual basis for (1) his conspiracy claims, (2) his claims against Bolish and Drewry for injunctive and declaratory relief, (3) his claims against defendants Brophy, Nunn, and Armstrong, and (4) his claims against the City of Carrollton for violation of his federal due process rights, (see Fish Footnote 1, which follows.)

[Fish Footnote 1: A *pro se* plaintiff should be accorded leniency and should be permitted to amend his pleading when the complaint state a potential ground for relief. See *Gallegas v. State of Louisiana Code of Criminal Procedures Art. 658 Para. A and C(4)*, 858 F.2D 1091, 1092 (5th Cir. 1988).]

See Memorandum Order ("Order") dated April 9, 1999 at 8.

"On April 29, 1999, Ellis filed an amended complaint. *See* Plaintiff's Second Amended Complaint. Rather than take advantage of the opportunity to replead his case and allege with sufficient particularity the factual basis of his claims, however, Ellis' amended complaint merely disagrees with the court's findings and repeats the conclusory allegations of his earlier complaint.

"Ellis' amended complaint completely fails to plead sufficient facts to support his conspiracy claims. *See* amended at 5-7. First, the amended complaint does nothing more than reiterate Ellis' earlier allegations against defendants Bolish and Drewry. (Please now see Fish footnote 2, as follows.)

[Fish Footnote 2: Ellis maintains that Bolish and Drewry are not entitled to prosecutorial and judicial immunity, contrary to the court's holding in the order of April 9, 1999 at 4-5 because they are not 1 legitimate holders of the office of prosecutor and judge. *E.g.*, Amended Complaint, Par. 8(c), (d), 12(a), (e), 14. The apparent basis for this contention is that the statue authorizing the City of Carrollton to create a municipal court of record, Tx. Govt. Code Sec. 30.01091-30.01113, (Vernon Supp. 1999), is void, *see* amended Complaint, Para 8(a), B), 9(a), (b), 20, 22, 23, as violative of the Texas Constitution's prohibition against local or special laws, Tex Const. Art

III, Sec. 56. *See* Amended Complaint, Para 8(b), 22; Plaintiff's First Amended Motion for Summary Judgment (incorporated by reference in the Amended Complaint), Par. I(2), III (Element #2). The courts of Texas are, of course, the ultimate expositors of what the constitution and statutes of that state mean. Those courts have uniformly rejected the argument that a statue creating a court for a particular county violates the proscription against local or special laws. See *Kelly v. State*, 724 SW2d 42, 47 (Tex. Crim. App. 1987) (rejecting contention that Art 1918c [now Tx. Govt. Code Sec. 54.301 *et seq.*] is a local or special law, despite its applicability only to Dallas County) and cases cited therein.

See Amended Complaint Par. 12. Second, although the amended complaint alleges that defendants Brophy, Nunn, and Armstrong were involved in the conspiracy by virtue of their signing a feasibility study, a resolution and an ordinance, *see* Amended Complaint Par. 11, these new factual allegations are insufficient to support a conspiracy claim against those defendants. Ellis' bald allegations that a conspiracy existed are simply insufficient to support his claim under 42 U.S.C. Sec. 1983. See *Young v. Biggers*, 938 F2d 565, 569 (5th Cir. 1991); see also *Fernandez-Montez v. Allied Pilots Assoc.*, 987 F2d 278, 284 (5th Cir. 1993) (holding that the court need not accept such conclusory allegations as true); *Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.* 677 F2d 1045, 1050 (5th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983).

"The amended complaint also completely fails to plead sufficient facts to support Ellis' claims against Carrollton for violation of his federal due process rights. As before, Ellis relies on conclusory allegations to support his claims, *see* Amended Complaint Par. 16-19, but such allegations are insufficient as a matter of law. See *Spiller v. City of Texas City Police Dept.*, 130 F. 3d 162, 167 (5th Cir. 1997) (stating that in order to hold a municipality liable under Sec. 1983, the complaint must allege facts describing the policy or custom and its relationship to the underlying constitutional violation).

"Finally, Ellis' amended complaint renews his plea for the

court to "make the general determination" that the Carrollton municipal court is illegally created and that his conviction is thus "simply unsustainable". *See* Amended Complaint Par. 23-25. Although he argues that the instant lawsuit is not a collateral attack upon a state court judgment", Ellis fails to satisfy the court that his claims are not barred by the *Rooker-Feldman* doctrine. See *Hale v. Harney*, 786 F2d. 688, 690-91 (5th Cir. 1986) (holding that the *Rooker Feldman* doctrine is not limited to actions which "candidly" seek review of a state court judgment, but extends to cases in which the plaintiff's claims are "inextricably intertwined" with the state court judgment); see also *Liedtke v. State Bar of Texas*, 18 F3d 315, 317 (5th Cir.), *cert denied*, 513 U.S. 906 (1994).

"Because Ellis has failed to correct the deficiencies of his previous complaint, his claims are dismissed with prejudice."

II. Opinion of U.S.District Court, Dallas Division
Ellis v. City of Garland, et al.
Cause No. 3:99-CV-0413-G
Date of Entry: July 8, '99

Judge A. Joe Fish Memorandum Order Dismissing Plaintiff's case against City of Garland, et al.

"Before the court is the motion of the Defendants the City of Garland, Robert Beasley, Charles Hinton, Ron Jones, Shannon Kackley, Montrice Session and Debbie Frey to dismiss the plaintiff's claims against them. For the following reasons, the motion is granted.

I. BACKGROUND

"On Feb. 25, 1999, plaintiff Ellis filed the instant suit, *pro se*, pursuant to 42 U.S.C. Sec. 1983 alleging that in 1995 he was convicted of five traffic offenses in the Garland municipal court of record and was thereby deprived of his property

without due process of law. (See Fish Footnote 1, as follows in full...)

[Ellis' convictions were upheld by the Dallas County Criminal Court of Appeals. *See* Defendants the city of Garland, et el., Motion to Dismiss for Lack of Jurisdiction over the Subject Matter, Lack of Jurisdiction over the Defendants, Failure to state a claim, Failure to Plead a Short and Plain Statement of Plaintiff's Claims and Brief in Support at 2. Ellis' appeal to the 5th District Court of Criminal Appeals at Dallas was dismissed as untimely. See *id.* See also Complaint Par. 48.]

See Original Complaint and Jury Demand ("Complaint") Para. 2, 9 40-48.

"In his complaint, Ellis avers that the state statutes which authorize Garland to create and operate municipal court of record, such as the one which convicted him, violate the Texas Constitution. *See* Complaint Para. 51-56. Specifically, Ellis asserts that the Texas law prohibits the state legislature from delegating to Garland the authority to establish a municipal court. *See* Complaint, Para. 51. He maintains that by ignoring state law and establishing the "homemade" municipal court, *id* Para. 2, Garland prevented him from accessing a duly-constituted, "legitimate" state court and thus violated his right to due process under the Fourteenth Amendment to the United States Constitution. (Please See Fish Footnote 2, as follows.)

[On March 16, 1998, Ellis filed a complaint making similar claims against the City of Carrollton and several City of Carrollton officials. See *Michael B. Ellis v, City of Carrollton, et al.*, civil action no. 3:98-CV-0706 in the United States District Court for the Northern District of Texas. The claims in that case were dismissed by the court, on May 28, 1999. See *Ellis v. Carrollton*, Memorandum Order of April 9, 1999.]

"Ellis' complaint also asserts that the Texas legislature illegally enacted legislation permitting Garland to create rules of procedure for the municipal court and that Garland used its power to create such rules to deprive him of his right to

appeal. See *id* Para. 53-54. Ellis complains that Garland permitted assistant city attorneys, who are not "bonded and sworn State prosecuting attorneys, as mandated by the Texas Constitution" to prosecute the state criminal cases against him in the municipal court. See *id* 56. Ellis also complains that the state legislature attempted to prevent him from appealing his conviction by codifying the rules pertaining to appeals form the municipal court in the Govt. Code "where no layman would find them". Finally, Ellis complains that all the defendants engaged in a statewide, "open conspiracy" to establish and operate illegal municipal 'courts of record' for the purpose of eliminating appeals and thus "reaping financial benefit". See *id* Para 24, 28, 57-58. As a result of all these illegal acts, Ellis urges, his convictions are void and "unsustainable". See *id.* Para 23, 80. In addition to damages, declaratory and injunctive relief, Ellis seeks to "compel the Defendants to expunge the criminal record created" against him. *See* Compliant Para. 30.

"In a separate cause of action, Ellis maintains that defendant Beasley is liable to him for false arrest, because Beasley was not a properly qualified Texas Judge. *See* Complaint Para. 60-61. Ellis contends that Beasley had no authority to act as a judge due to the fact that Beasley had not filed a sworn "Statement of Officer" with the Texas Secretary of State, as required by the Texas Constitution. See *id* Par. 61. Ellis seeks damages from Beasley in the amount of $1,500,000.00 for operating a sham 'court', causing the very first and only arrest of Ellis in his life, and "stealing Ellis' fingerprints", all to "conceal Beasley's illicit holding of multiple judicial benches". See *id.* Para 84.

II. Analysis

A. Standard for Dismissal under Rule 12(b)(6)

"Federal Rule of Civil Procedure 12(b)(6) authorizes

dismissal of a complaint for "failure to state a claim upon which relief can be granted". However, a motion under Rule 12(b)(6) should be granted only if it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41; *Lefall v. Dallas I.S.D.*, 28 F3d 521 (5th Cir. 1994); see also *Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F2d 1045(5th Cir. 1982), *cert denied*, 459 U.S. 1105(1983) (citing Wright & Miller, Federal Practice and Procedure: Civil sec.1357 at 598(1969), for the proposition that "the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.").

"In determining whether dismissal should be granted, the court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *Capital Parks, Inc. v. Southeastern Advertising and Sales System, Inc.*, 30 F3d 627(5th Cir.1994); *Norman v. Apache Corporation*, 19 F3d 1017(5th Cir. 1994); *Chrissy f. by Medley v. Mississippi Dept. of Public Welfare*, 925 F2d 844 (5th Cir. 1991).

B. Ellis' claims for violations of state law

"The gravamen of Ellis' complaint is that the statute authorizing the City of Garland to create and operate a municipal court of record violates the Texas Constitution's prohibition against local or special laws, Texas Cons. Art.III, Sec. 56. *See* Complaint Par. 31-38, 51-59. Section 1983, however, does not provide a cause of action for violations of state constitutional or statutory law. *See* 42 U.S.C.Sec.1983; *Williams v. Treen*, 671 F2d 892 (5th Cir. 1982) (holding that a violation of state law alone does not give rise to a cause of action under section 1983), *cert. Denied*, 459 U.S. 1129 (1983). Therefore, to the extent that Ellis is relying on section 1983 to provide a remedy for violations of the Texas Constitution or Texas statutes, his claims are dismissed for failure to state a claim upon which relief can be granted.

(Please see Fish footnote 3, as follows in full.)

[*See* e.g. Complaint Para. 4 (complaining that the practice of allowing private citizens called city attorneys, their assistants or other agents of the City, to prosecute state criminal cases in lieu of bonded, sworn State's Attorneys violates Art. V, Sec. 21 of the Tx. Constitution, the controlling statute regulating prosecutions in Dallas County and numerous Texas Court of Criminal Appeals precedents").]

"Furthermore, the courts of Texas are the ultimate expositors of what the constitution and statutes of that state mean, (See *Moore v. McCotter*, 781 F2d 1089) (5th Cir 1986), and those courts have uniformly rejected the argument that a statute creating a court for a particular county violates the proscription against local or special laws. See *Kelly v. State*, 724 SW2d 42 (Tex. Crim. App. 1987) (rejecting contention that Art. 1918c [now Tx. Gvt. Code 54.301 *et seq.*] is a local or special law, despite its applicability only to Dallas County) and cases cited therein.

C. Ellis' Conspiracy Claims

"Ellis complaint also repeatedly asserts that the individual defendants participated in a successful open conspiracy to establish and operate the "illegally created" municipal court of record in order to "increase the flow of ...illegal revenue" to themselves and to deprive Ellis of his statutory right to state appellate remedy. *See* Complaint Para 3; see also *id.* Para 2 ("the Defendants, acting in open concert, have perverted the state judicial process so as to deprive Plaintiff of his property without due process of law.") Having asserted such conspiracy claims under section 1983, Ellis is required to plead operative facts upon which his claims are based. See *Young v. Biggers*, 938 F2d 565 (5th Cir. 1991). Bald allegations that a conspiracy existed are insufficient. See *id.*

"Ellis' allegations that the defendants conspired to establish and operated the 'court of record' for the pecuniary benefit of the city and themselves are conclusory at best. (Now please see Fish Footnote 5, as follows in full.)

[For example, Ellis's most detailed allegation against defendant Hinton, the city attorney for Garland, is that Hinton served as Garland's "legal counsel (the mastermind) during the creation of the bogus 'court', a hugely profitable open conspiracy which has eliminated due process rights of thousands of helpless silent citizens in the exchange for an increase in revenue for the City, himself and his bar brothers." *See* Complaint Para. 82. Ellis' strongest allegation against the defendants Jones and Kackley is that they "ignorantly followed Hinton's lead in usurping the authority of State Prosecuting Attorneys without taking oaths, filing bonds or even holding 'offices'". See *id* Para. 82. His most specific allegations against the court clerks Session and Frey is that they "allowed themselves to be used by lawless attorneys to 'swear out' (stacks) thousands of criminal 'complaints', of which they have no personal factual knowledge." See *id.* Para. 83.]

Therefore, they are insufficient to support his section 1983 claim. See *Young*, 938 F2d; see also *Brinkmann v. Johnston*, 793 F2d 111 (5th Cir. 1986); *Arsenaux v. Roberts*, 726 F2d 1022 (5th Cir. 1982). Because Ellis has failed to allege specific facts supporting his allegations, his conspiracy claims against the individual defendants are dismissed.

D. The *Rooker Feldman* Doctrine

"Ellis' complaint seeks a declaration that his conviction by the Garland municipal court of record "is not sustainable". Complaint Par.80(E); Par 23; see also *id.* Par. 30 (seeking "expungement" of the criminal record created by the acts of the Defendants). This relief, however is unavailable under the *Rooker-Feldman* doctrine, which holds that federal district courts lack jurisdiction to entertain collateral attacks on state court judgments. See *Liedtke v. State Bar of Texas*, 18 F3d 315, (*cert. denied*), 513 U.S. 906 (1994); see also *Hale v Harney*, 786 F2d 688 (5th Cir. 1986) (holding that the *Rooker-Feldman* doctrine is not limited to actions which "candidly" seek review of a state court judgement, but extends to cases in which the plaintiff's claims are "inextricably intertwined" with the state court judgment).

Thus, Ellis' claims generally challenging his convictions as the product of an illegally created court are dismissed because they are barred by the *Rooker-Feldman* doctrine.

E. Ellis' Claims for Damages Against defendant Beasley

"As stated above, Ellis claims that defendant Beasley, the municipal court judge who presided over the jury trials which resulted in Ellis' 1995 convictions, is liable to him for ordering Ellis' arrest for contempt. *See* Complaint Par. 60-61. Judicial officers, however, enjoy absolute immunity from liability for damages for acts performed in the exercise of their judicial functions. See *Kruger v. Reimer*, 66 F3d 75 (5th Cir 1995); *Dayse v. Schuldt*,894 F2d 179 (5th Cir 1990); *Brinkmann*, 793 F2d 112; *Turner v. Raynes*, 611 F2d 92, (5th Cir.) *cert. denied*, 449 U.S.900 (1980) (justice of the peace); *Guedry v. Ford*, 431 F2d 660(5th Cir) (1970) (municipal judge), *overruled in part on other grounds; Sparks v. Duval County Ranch Co., Inc.* 604 F2d 976(5th Cir.1979).
Ellis' claims for damages against Beasley relate to acts he performed as part of his judicial function. Thus, Ellis' claims for damages against Beasley are dismissed because they are barred by the doctrine of judicial immunity."

III. Conclusion

"For the reasons discussed above, the defendants' motion to dismiss is granted.

III. Opinion of 5th Circuit
Causes 99-10766 and 99-10906, as consolidated by the Circuit
Ellis v. City of Carrollton, et al., & Ellis v. City of Garland, et al.
Date of Entry: April 12, '00
(Emilio M. Garza, authored the Opinion of the Panel)

"Michael B. Ellis, ("Ellis) appeals from the district court's dismissal of his 42 U.S.C. Sec. 1983 complaints against the City of Carrollton, et al., ("Carrollton") (appeal No. 99-10766), and against the City of Garland, et al., (appeal no. 99-10906) for failure to state a claim pursuant to FRCP 12(b)(6). For the reasons set forth below, we affirm the judgments of the District court.

"Ellis presents the same two "threshold issues" in both appeals: (1) whether the Texas Legislature had authority to "re-delegate" to a political subdivision such as Carrollton or Garland, the exclusive power to create municipal courts and "suspend operation" of state statutes that created municipal courts in Texas, and (2) whether the Texas legislature had authority to enact local laws regulating the practice before a city's municipal court. (Please see now Garza's Footnote No. 1, as follows in full.)

[Ellis presents additional issues in each appeal which he claims "need only be considered if (we find) for Appellant on either threshold Issue No.1 and 2 above". Since we find that Ellis fails to state a cognizable Sec.1983 claim, we decline to address these additional issues.]

Because the issues in the two cases are identical, we consolidate the appeals pursuant to Federal Rule of Appellate Procedure 3(b)(2): ("When the parties have filed separate and timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.")

"Ellis received several traffic citations in Garland and one citation in Carrollton. He was convicted of each offense after a trial in the proper city's municipal court of record. Ellis appealed his Garland convictions to the County Court of Criminal Appeals of Dallas County, which affirmed his conviction. The Court of Appeals, Fifth District of Texas at Dallas dismissed his subsequent appeal as untimely. He did not appeal his Carrollton conviction. Instead, Ellis turned to the federal court system, suing Carrollton and Garland, as well as various prosecutors, judges and other city officials and

contending that his convictions in the municipal court systems deprived him of his property without due process of law. Specifically, Ellis claims that the state statutes authorizing Garland and Carrollton to create municipal courts of record violate the Texas Constitution. Ellis also alleges that (the) state legislature did not have the authority to enact local rules to guide practice in the municipal courts. Finally, in the Garland suit, Ellis asserted a separate false arrest claim against Municipal Court Judge Robert Beasley, claiming that Judge Beasley had no authority to order Ellis' arrest for contempt of court because Beasley had not filed a sworn "Statement of Officer" with the Texas Secretary of State, as required by the Texas Constitution. (Please see now Garza Footnote No.2, as follows.)

[The district court held that absolute judicial immunity barred the false arrest claim.]

"Pursuant to Rule 12(b)(6), the district court dismissed both complaints for failure to state a claim. (Please see now Garza Footnote No.3, as follows.)

[The district court dismissed the Carrollton suit but also granted Ellis leave to file an amended complaint that alleged with greater particularity the basis for several of his claims. Ellis filed an amended complaint, but failed to state his claims with an increased level of specificity. Accordingly, the court dismissed the amended complaint.]

"We review the district court's ruling under Rule 12(b)(6) *de novo*. See *Shipp v. McMahon*, 199 F3d 256 (5th Cir. 2000).

"A violation of state law is not cognizable under Section 1983. See *Lefall v. D.I.S.D*, 28 F3d 521 (5th Cir. 1994). Ellis premises both his complaints on the allegation that the establishment of the municipal courts, and the accompanying rules, violate the Texas Constitution. In so doing, Ellis fails to articulate a violation of a federal right, save a conclusory allegation that the appellees' actions deprived him of due process. Such a conclusory allegation is an insufficient basis for a Section 1983 claim. See *Kinash v. Callahan*, 129 F3d 736 (5th Cir.1997). Accordingly, the district court properly

dismissed the cases for failure to state a cognizable federal claim. See *Shipp*, 199 F3d 260 ("This strict standard of review under 12(b)(6) has been summarized as follows: 'The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief.'") (citation omitted).

"Additionally, in appeal No. 99-10906, Ellis argues judicial immunity should not bar his false arrest claim against Municipal court judge Beasley. A judge is entitled to absolute immunity in the performance of his judicial duties. See *Hulsey v. Owens*, 63 F3d 354(5th Cir.1995). Judge Beasley's contempt order was clearly a judicial act, and Ellis fails to demonstrate that a municipal judge is without jurisdiction to issue such an order. Thus, the district court did not err in dismissing the claim based on judicial immunity. See *id.*; see also *Malina v. Gonzales*,994 F2d 1121 (5th Cir.1993) (holding that absolute judicial immunity extends to all judicial acts that are not performed in the clear absence of jurisdiction). (Please see now Garza Footnote No. 4, which follows now in full.)

[Ellis claims that Judge Beasley is not entitled to judicial immunity because he was not properly certified as a judge under Texas law. The County Court of Criminal Appeals of Dallas County affirmed Judge Beasley's ruling, implicitly recognizing it as that of a valid court. The Court of Appeals, Fifth District of Texas at Dallas dismissed Ellis' appeal as untimely, also implicitly finding that Judge Beasley had the authority to issue the ruling. Without any evidence from Ellis that this basic assumption was incorrect, we will not disturb that finding here.]

"Accordingly, the judgments of the district court are AFFIRMED. Ellis' motions (1) to strike Carrollton's Brief as non-responsive and (2) requesting that we take judicial notice of various Texas statutes and Texas Constitutional provisions are DENIED as moot."